(3)

01-1852

IN THE

Supreme Court of the United States

October Term, 2001

No. _____

MARVIS JETT,

Petitioner,

vs.

WASHINGTON COUNTY SCHOOL BOARD,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITIONER'S REPLY BRIEF

Carolyn D. Cummings
Cummings, Hobbs & Wallace, P.A.
462 W. Brevard Street
Tallahassee, Florida 32301

Telephone No.: (850) 224-3730
Facsimile: (850) 224-2202

Counsel for Petitioner

32 pp

RESTATEMENT OF QUESTIONS PRESENTED

WHETHER THE JUDGMENT RENDERED BY THE UNITED STATES COURT OF APPEAL FOR THE ELEVENTH CIRCUIT WHICH MADE ITS OWN FINDINGS OF FACT AND REVERSED THE JURY VERDICT AND THE TRIAL JUDGES' DECISION THAT A PRIMA FACIE CASE WAS ESTABLISHED, WARRANTS THIS COURT'S IMMEDIATE REVIEW.

WHETHER THE COURT OF APPEALS DECISION BELOW FAILS TO APPLY THE RULE ADVANCED BY THIS COURT IN *UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS V. AIKENS.*

WHETHER EVIDENCE IN THE RECORD SUPPORTS JETT'S REPRESENTATIONS TO THIS COURT THAT THE SALARY POLICY ONLY HAD AN IMMEDIATE AFFECT ON HER AND THAT AT LEAST ONE WHITE EMPLOYEES' SALARY WAS INCREASED OR REMAINED THE SAME AFTER HE WAS MOVED TO A LOWER POSITION.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iv
RESTATEMENT OF THE FACTS	1

REASONS FOR GRANTING THE PETITION

I. This court should grant certiorari since the decision the judgment rendered by the United States Court of Appeal for the Eleventh Circuit which made its own findings of fact and reversed the jury verdict and the trial judges' decision that a prima facie case was established, warrants this court's immediate Review 1

II. Certiorari should be granted because the court of appeals decision below fails to apply the rule advanced by this court in *United States Postal Service Board of Governors v. Aikens*..... 2

III. Evidence in the record supports Jett's Representations to this court that the salary

Page

policy only had an immediate affect on her and that at least one white employees' salary was increased or remained the same after he was moved to a lower position 3

CONCLUSION 5

APPENDIX "A" 1-A

TABLE OF AUTHORITIES

Cases Page(s)

Alexander v. Fulton County, Georgia, 207 F. 3d 1303 (11th Cir. 2000) 2

United States Postal Service Board of Governors v. Aiken, *460 U.S. 711, 103 S. Ct. 1478, 75 L. Ed. 2d 403* (1983) 2, 3

RESTATEMENT OF THE FACTS

After working for the Washington County School Board as a secretary for over twenty-two years, Jett was selected to be moved out of the District Office in 1989, allegedly because of reassignment of duties and because of the need for fewer secretaries. She had been the only black secretary in the District Office for over (22) twenty-two years with more seniority than any other secretary in the office; yet, she was the one secretary selected to be moved out of the office.

From 1989 to 1984 she was placed in various teachers' aide positions, but was paid at the higher level secretarial salary until her demotion, pursuant to the new policy, to a Teachers' Aide position in 1994, at age fifty-five (55). When the policy became effective, Jett's salary was reduced from approximately $17,881 annually to $12,171 annually. No other secretary was immediately affected by the policy and there is no evidence in the record that any other employee was immediately affected by the policy.

During the litigation of this matter, the School Board advanced the name and documentation of (6) six employees whom it alleged, were also affected by a transfer and/or by the salary policy adopted by the School Board. (A-9).

REASONS THE WRIT SHOULD BE GRANTED

I. THE JUDGMENT RENDERED BY THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT WHICH MADE ITS OWN FINDINGS OF FACT AND REVERSED THE JURY VERDICT AND THE TRIAL JUDGES' DECISION THAT A PRIMA FACIE CASE WAS ESTABLISHED, WARRANTS THIS COURT'S IMMEDIATE REVIEW.

Respondent asserts to this Court that Jett failed to raise the argument before the Eleventh Circuit that it was improper for that Court to inquire into the adequacy of her prima facie case, after she

prevailed at trial upon the merits.[1] As evidenced by the record, Respondent's contention is totally without merit.

Jett urged the Eleventh Circuit to adhere to the dictates of *Alexander v. Fulton County, Georgia*, 207 F. 3d 1303 (11th Cir. 2000), by submitting the case as supplemental authority, since the case was reported by the Eleventh Circuit after Jett's Brief was submitted. (Appendix, p. A-1& A-2, pargs. 1 & 2). The recent case and Jett's argument were advanced to the court long before the Eleventh Circuit reversed the jury verdict and prior to the oral argument of the parties before the Three Judge Panel in Montgomery, Alabama.[2] Additionally, Jett raised the issue before the Eleventh Circuit on pages 13 and 14 of her Petition for Rehearing En Banc.

Jett raised concerns that on appeal, the Eleventh Circuit should not substitute as the trier of fact, where a jury sat through two days of conflicting evidence, judged the credibility of the witnesses and determined that the School Board's motives were a pretext to discriminate against Jett. Contrary to the representation by Respondent, clearly the question of the relevancy or not of whether Jett had established a prima facie case, once the case reached the Eleventh Circuit, was raised below and therefore is not an issue of first impression before this court.

II. THE COURT OF APPEALS DECISION BELOW FAILS TO APPLY THE RULE ADVANCED BY THIS COURT IN *UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS V. AIKENS*

Respondent maintains that the Eleventh Circuit's decision below was consistent with the holding of *United States Postal Service Board of Governors v. Aikens. 460 U.S. 711, 103 S. Ct. 1478, 75 L. Ed. 2d 403 (1983),* because even though the Eleventh Circuit addressed whether Jett established a prima facie case, it ultimately held that Jett failed to prove that the School Board's proffered reason for the policy was a pretext for discrimination.[3]

---

[1] Respondent's Brief, pp. 16-17.

[2] Oral Argument before the Eleventh Circuit in this matter was held on October 25, 2000.

[3] Respondent's Brief at pp. 17 & 18.

This finding of the Eleventh Circuit, disregards the holding of this court in *United States Postal Service*, which directed that once a discrimination case is fully tried on the merits, the factfinder must then decide whether the defendant intentionally discriminated against the plaintiff. *Id.* at 713. In *United States Postal Service* the District Court was the trier of fact because a bench trial was held; however in the case at bar, the jury was the trier of fact and not the Eleventh Circuit. The jury properly decided disputed issues of fact with regards to the adoption of the salary policy in favor of Jett. The Eleventh Circuit erred by independently reweighing the evidence presented at trial and overturning the jury verdict.

III. EVIDENCE IN THE RECORD SUPPORTS JETT'S REPRESENTATIONS TO THIS COURT THAT THE SALARY POLICY ONLY HAD AN IMMEDIATE AFFECT ON HER AND THAT AT LEAST ONE WHITE EMPLOYEES' SALARY WAS INCREASED OR REMAINED THE SAME AFTER HE WAS MOVED TO A LOWER POSITION.

The Respondent contends that the salary policy was adopted to save money and that Jett made recurring misstatements regarding the salary policy in her Petition for Certiorari.[4] However, the facts as set forth by Jett regarding the salary policy are supported by the record. Jett suffered an immediate adverse impact because of the salary policy. Jett was notified by the Superintendent, that due to the salary policy, effective July 1, 1994, she would be demoted and she would suffer a drastic pay reduction after (27) twenty-seven years of employment with the School Board. (See Jett's Petition for Certiorari at A-16). The record is devoid of any other notification of demotion or of salary reduction to any other employees, due to the salary policy.

The jury heard testimony from School Board Representative, Beverly Helms, regarding other employees the Board had advanced to demonstrate a similar affect on their salaries as Jett had suffered. Helms testified specifically regarding Plaintiff's Exhibit 3, which was a document prepared and submitted by the School Board during the course of this litigation. (Exhibit 3 is

---

[4] Respondent's Brief, p. 3.

included in the appendix at A-3 through A-10. With regards to the Exhibit 3, Helms admitted before the jury that two employees (French and Showers), which the Board had advanced to establish similar treatment as the treatment accorded Jett, in actuality, were not affected by the salary policy. French and Showers were demoted with salary reductions five years and two years, respectively, before the effective date of the policy. (See also exerpts from Helm's testimony on this issue at A-14 through A-16).

Helms further testified that another employee the Board listed to establish similar treatment to Jett, in fact did not suffer a reduction in salary when he was moved from a higher paying position. Helms testified before the jury that when Jerry Tyre was moved from a principal position, which paid more, to the director of transportation position, his salary stayed about the same. (A-18, lines 14-25 and A-19, lines 1-19). In fact, Helms further testified that Tyre only received a $9,000 salary reduction when he was moved from the director of transportation position to a teaching position. A-19, lines 9-14. Here, the School Board chose not to save money when Tyre was moved from a principal position to the director of transportation position; yet, it chose to reduce Jett's salary at a time when she earned far less than Tyre was earning.

Therefore, whether the policy was actually adopted to save money and whether it was applied to Tyre in the same adverse manner that it applied to Jett was a disputed issue of fact. The totality of the evidence should have been considered by the Eleventh Circuit in the light most favorable to Jett to determine if reasonable jurors could have found discrimination. *Aikens*, supra at 827. The Eleventh Circuit erred by not so doing. The jury properly weighed the credibility of the witnesses and properly weighed the conflicting evidence and determined that the School Boards' motives were unlawful.

Because the Eleventh Circuit Court of Appeals decision effectively second-guessed the jury and failed to accord any deference to the District Court or to the jury, the decision below must be reversed.

CONCLUSION

For the foregoing reasons the petition for Writ of Certiorari should issue to review the judgment and opinion of the Eleventh Circuit Court of Appeals.

Respectfully Submitted,

CAROLYN D. CUMMINGS
Florida Bar No.: 0353442
CUMMINGS, HOBBS & WALLACE, P.A.
462 W. Brevard Street
Tallahassee, Florida 32301
Counsel for Petitioner
850-224-3730
850-224-2202 Facsimile

IN THE

Supreme Court of the United States

October Term, 2001

No. _____

MARVIS JETT,

Petitioner,

vs.

WASHINGTON COUNTY SCHOOL BOARD,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

APPENDIX "A"

Carolyn D. Cummings
Cummings, Hobbs & Wallace, P.A.
462 W. Brevard Street
Tallahassee, Florida 32301

Telephone No.: (850) 224-3730
Facsimile: (850) 224-2202

Counsel for Petitioner

TABLE OF CONTENTS

	Page
Petitioner's Notice of Supplemental Authority	A-1
Plaintiff's Exhibit 3	A-3
Excerpts From Direct Testimony of School Board Representative Beverly Helms	A-11

Cummings Hobbs & Wallace, P.A.

Attorneys At Law
462 W. Brevard Street
Tallahassee, FL 32301
Ph 850-224-3730 Fax 850-224-2202

Thomas K Kahn, Clerk
Attn: Ms. Jennifer Johnson
United States Court of Appeal
Clerk of the Court
56 Forsyth Street, N. W.
Atlanta, Georgia 30303

October 17, 2000

Re: **Marvis Jett v. Washington County School Board**
Court of Appeals No.: 00-13435-D

Dear Mr. Kahn:

Pursuant to 11th Cir. Rules 28 (j) and 28-4.I.O.P.-6, please allow the Plaintiff to refer the Court to a case which was reported by the Eleventh Circuit Court of Appeals, after the Appellee's Brief was submitted. The citation is as follows: *Alexander v. Fulton County, Georgia,* 207 F. 3d 1303 (11th Cir. 2000).

The case supports affirming the jury verdict as set forth in Appellee's Brief as referenced below. The significant findings of the court, in pertinent part are as follows:

(1) On appeal the Court must consider the sufficiency of all of the evidence presented and look beyond the evidence available when the motions for summary judgment and directed verdict were made. (Page 17 of Appellee's Brief).

(2) When the trier of fact has before it all of the evidence needed to decide the ultimate issue of whether the Defendant intentionally discriminated against the Plaintiff, whether the Plaintiff properly made out a prima facie case is "no "longer relevant". The jury is free to consider all of the evidence presented and to disbelieve the Defendant's articulated legitimate non-discriminatory reasons. (Pages *45-51* and *59-62* of Appellee's Brief).

(3) For jobs that require minimum training, a statistical comparison of the racial composition of an employer's work force to the racial composition of the relevant population may be probative of a pattern of discrimination; nevertheless, under the abuse of discretion standard, the admissibility of irrelevant statistical evidence is not grounds for reversal, unless the admission resulted in a substantial injustice to the Defendant. (Pages *51-59* of Appellee's Brief).

Enclosed please find the original and three copies of this letter as required by the rules. Feel free to contact me if you have any questions or concerns.

Sincerely,

Carolyn D. Cummings

cc: William R. Mabile, III, Esq.

Carolyn Cummings Barbara Hobbs Angela Wallace

A-3

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PANAMA CITY, DIVISION

CASE NO. 5:99CV13-SPM

MARVIS JETT,

Plaintiff,

vs.

WASHINGTON COUNTY SCHOOL BOARD,

Defendant

_____/

AFFIDAVIT OF BEVERLY HELMS

STATE OF FLORIDA)
)
COUNTY OF WASHINGTON)

COMES NOW the undersigned, BEVERLY HELMS, after having been duly sworn, deposes and says:

1. My name is Beverly Helms and I am over the age of 21 years. I am the Director of Administrative Services for the Washington County School Board and have been so employed since 1980.

2. I am well acquainted with Marvis Jett and worked with her at the Washington County School Board administrative office from 1980 through 1989. I am personally knowledgeable of Marvis Jett's continued employment with the Washington County School Board at the district media center, Chipley High School and Roulhac Middle School. Ms. Jett continues to be employed with the Washington County School Board.

3. Through my employment with the Washington County School Board and in my position as Director of Administrative Services, I have personal knowledge of the allegations of race discrimination raised by Marvis Jett and the circumstances leading to her transfer from the district administrative office to the district media center, subsequent transfers to Chipley High School and Roulhac Middle School and the change in her position from secretary to teacher aide with a consequential reduction in salary and benefits.

4. Marvis Jett was employed as a secretary at the district office from 1967 until June 1989. Due to the reassignment of her duties and a need for less secretarial support at the district office, Ms. Jett was transferred from the district administrative office to the district media center beginning with the school year 1989 through 1990. While at the district media center, Ms Jett functioned as an aide, but continued in the secretary position at the same salary and benefits. Ms. Jett was not happy in her position at the media center and was assigned to Chipley High School. Ms. Jett worked in the Chipley High School library during school years 1990 through 1991 and 1991 through 1992. Although functioning as an aide, Ms. Jett continued in the secretary position with secretary's pay. Ms. Jett was reassigned to Roulhac Middle School at the beginning of the 1992 school year. Ms. Jett continues to be assigned to Roulhac Middle

School. During her first two years at Roulhac Middle School, 1992 through 1993 and 1993 through 1994, Ms. Jett continued in the secretary position at secretary pay, but was assigned aide duties.

5. On July 1, 1989, another district level secretary, Sandra French, a white female was transferred from a level five secretary to level six secretary. The transfer was the result of inadequate performance attributed to health related problems. As a consequence of the transfer, Ms. French suffered a reduction in salary of $539.00. Her new salary was consistent with the pay of the level six secretary position to which she had been transferred.

6. In April 1992, Delphine Griggs, a white female who was the district media coordinator was transferred to media specialist at Kate Smith Elementary School. Because Mantis Jett was performing duties as an aide, but being paid commensurate with a secretarial position, the School Board treated Delphine Griggs similarly and she retained her pay even though her responsibilities had changed. The practice of not reducing pay when employees were transferred was continued until July 1, 1994.

7. On July 1, 1992, Edwina Showers, a white female, was transferred from a level two support position at the district office to a level four position. As a consequence, her salary was reduced from $25,342.00 to $20, 855.00. Unlike Marvis Jett and Delphine Griggs, Ms. Showers was not permitted to retain her higher level salary.

8. In April 1993, the principal of Roulhac Middle School recommended Marvis Jett's continued employment. Commensurate with her actual duties, the principal's recommendation was for Ms. Jett to continue

employment as a teacher aide. For four years, Marvis Jett had performed aide duties while being paid at the higher secretarial rate. Although recommended to continue her employment as a aide and not as a secretary, Ms. Jett's pay was not reduced because of the expressed desire of the superintendent to affect her in the least adverse manner possible.

9. On May 10, 1993 Phil Flater, a white male, who was the principal at Chipley High School was recommended to be placed at Chipley High School and Roulhac Middle School as a teacher. His salary was to be based on the appropriate line of the teacher salary schedule and he was to be returned to a continuing contract. At that same meeting Pat Williams was recommended to be assigned to Chipley High School as Principal for 1993-94. His rate of pay was recommended to continue at the current placement on the administrative which was higher than the salary schedule for a High School Principal. The Board voted unanimously to table the recommendation of Mr. Flater "until the Board could consider a policy for this type transfer and salary plus to check back for the last 15 years and see how this same action was handled." They also voted (3-2) to table the recommendation of Pat Williams" until the information on Flater's recommendation was presented to the board". At that time the Board requested that a policy be developed for their review that would discontinue the practice of paying employees at a salary not commensurate with their duties.

10. On June 14, 1993 the Board approved the recommendation that Phil Flater remain on "the present administrative salary schedule. Beginning with the fiscal year 1994-95, his salary will be at the appropriate place on the instructional salary schedule with continuing contract status". They also approved the recommendation of Pat Williams. On July 12, 1993, the School Board held the public hearing,

consistent with the requirements of the Administrative Procedures Act, on the proposed policy addressing transfers and commensurate pay. Following the public hearing, the Board approved the proposed policy to become effective July 1, 1994, to require that individuals be paid at a level commensurate with the salary rate of the position to which they were assigned.

11. In the spring of 1994, Jerry Tyre, a white male, was recommended to be transferred from the position of Director of Transportation to a teaching position. The School Board agreed to Jerry Tyre remaining in the Director of Transportation position though the month of July 1994.

12. On July 1, 1994, Calvin Stevenson, a white male, was transferred from the principal position at Roulhac Middle School to be principal of Kate Smith Elementary School. Pursuant to the Board's new policy, Mr. Stevenson's salary was reduced.

13. On July 1, 1994, as a consequence of the Board's new policy, the salaries of all individuals who were being paid at a level not commensurate with their duties, were adjusted and reduced. On August 1, 1994, Jerry Tyre, the former Director of Transportation assumed a teaching position at Vernon High School and his pay was reduced commensurate with the new position. Jerry Tyre is currently the Superintendent of Schools for Washington County having been elected in 1996. Marvis Jett's salary was reduced on July 1, 1994. The practice of paying an individual at a level not commensurate with their duties ended with the passage of the Board's new policy on July 1, 1994. Pat Williams' salary was commensurate with the approved salary schedule for high school principals.

14. Currently there is no Washington County School Board employee who is receiving pay that is not commensurate with the position to which the employee is assigned. Marvis Jett, unlike most aides, has been allowed to work during the summer school in order to ameliorate the impact of the new pay policy.

15. The practice of paying individuals at a level not commensurate with their duties began with Marvis Jett's transfer to the district media center in July 1989. The practice ended with the passage of the Board's new policy on July 1, 1994.

16. The names of the individuals affected by a transfer and/or the School Board's new policy and their race, position titles, initial date of employment and rates of salary are listed below.

Name	Race	Position Titles	Initial Date of Employment	Pay Prior to Adjustment	Pay Following Adjustment
Phil Flater	White	Principal to Teacher	01/09/73	$50,509.38	$40,347.29
K Sandra French	White	Level 5 Secretary to Level 8 Secretary	08/01/79	$16,233.00	$15,694.00
Delphine Griggs	White	District Media coordinator to Media Specialist	02/19/73	$46,010.97	$42,159.43
Marvis Jett	Black	Secretary to Aide	10/02/67	$17,881.42	$13,293.01
Edwina Showers	White	Payroll Specialist to Data Entry	06/66	$25,342.00	$20,855.00
Calvin Stevenson	White	Middle School Principal to Elementary School Principal	03/15/68	$49,724.14	$47,693.00
Jerry Tyre	White	Director of Transportation to Teacher	06/17/68	$47,486.11	$38,828.80

17. There were no vacancies for secretaries between 1989 and 1994 in any school or at the district office. In the 1994 through 1995 school year, a secretary at Kate Smith Elementary School applied for and received a promotion to the data center. Another secretary from the Washington-Holmes Technical Center was transferred to fill her position. The transfer was made to reduce overstaffing at the technical center. In the 1995 though 1996 school year, Loretta Cook, a secretary at the district office, was transferred to the technical center to a level seven secretary position. Her transfer was made to further reduce staff at the district office and resulted in a reduction in pay for Ms. Cook.

18. Since 1994, only one secretary position has become available at the district administrative office. Mary Wagner, a black female, was hired as a secretary in April, 1999. Marvis Jett has not made a written request for transfer or made application for any position with the School Board since her transfer in 1989. The only other openings at the district office in recent years have been above the secretary level and all were in the finance department. These were openings for Director of Finance, Assistant Director of Finance, Finance Specialist and Coordinator of Finance.

19. Prior to Marvis Jett's transfer to the media center in 1989, the primary function for which she had been responsible, that is, attendance and property, were transferred to the Director of Administrative Services (me). After the transfer of Ms. Jett's primary functions, Ms. Jett was given a variety of assignments by various administrators on a day-to-day basis.

FURTHER AFFIANT SAYETH NOT.

Beverly Helms
Dr. Beverly Helms

The foregoing instrument was acknowledged before me this 29th day of June, 1999, by BEVERLY HELMS, who is personally known to me and who did not take an oath.

Signature of Notary Public

Judy L. Daniels
Signature of Notary Public

Judy L. Daniels
(Printed name of Notary Public)

My Commission Expires:

JUDY L. DANIELS
MY COMMISSION # CC 713794
EXPIRES: March 23, 2002
1-800-DO-NOTARY Fla. Notary Services & Bonding Co.

A. Yes, I did.
Q. And you swore that the information you gave under oath was truthful?
A. That's correct.
Q. So now you have before you, Ms. Helms, two documents where you have sworn that you were telling the truth in those documents; is that correct?
A. That's correct.
Q. Now, Plaintiff's Exhibit 2, I would like to direct you back to Plaintiff's Exhibit Number 2, and ask you to direct your attention to -- I'm sorry -- Plaintiff's Exhibit Number 3, the one I just recently gave you.

Direct your attention to paragraph number 16. Will you read that paragraph for the jury?
A. The names of the individuals affected by the transfer and/or the school board's new policy and their race, position, titles, name and dates of salary are listed below.
Q. Okay. I'm sorry. We got lost.
A. Yes, I'm sorry. If you would repeat the question.
Q. Okay. We are looking now at Plaintiff's Exhibit Number 3, which you have sworn to under oath; is that correct?
A. Yes, ma'am.

Q. Isn't it true, Ms. Helms, that some of the information you provided in this particular affidavit is real misleading?
A. Not to my knowledge.
Q. Isn't it true that you provided the names of seven Washington County school board employees, and their salary cuts to show that they were treated similarly to the way that Ms. Jett was treated in this document?
A. Right. I submitted the names of the individuals who were affected by the policy.
Q. That is correct?
A. Or who have been transferred and were affected by a cut in salary.
Q. Okay. So will you turn the page to page 7. And those seven individuals that are listed on page 7 are those seven individuals you submitted for comparison to Ms. Jett?
A. Yes, it is.
Q. But they weren't all treated similarly to Ms. Jett, were they, Ms. Helms?
A. They were.
Q. None of those individuals were involuntarily moved out of their job and positions, were they?
A. They were all involuntarily removed. None of them chose

to make the move.
Q. None of them were involuntarily placed into the positions that they were moved from; were they, Ms. Helms?
A. They were all involuntarily transferred from the position they held to the position that is shown on the paper.
Q. Well, let's start with Mr. Flater, the first individual

that you have listed. And am I correct that you have indicated he was in a principal position and he was moved to a teacher's position; is that correct?
A. Yes, ma'am.
Q. Now, will you tell the jury whether or not Mr. Flater was involuntarily placed in a principal position?
A. He wasn't involuntarily. He made application for that position.
Q. And he, in fact, enjoyed a salary of $50,590 in that position, didn't he?
A. That's correct.
Q. So he didn't -- so he was not involuntarily placed in that position, was he, Ms. Helms?
A. In the principal's position?
Q. That's correct.
A. No, he chose to apply.
Q. Now, isn't it true that Mr. Flater was

removed as a
principal to a teacher as a direct result of a new superintendent being elected?
A. I'm not sure if that is the only criteria. But he was changed as a result of a new superintendent?
Q. Now, I would like to direct your attention to the second individual you have listed, Sandra French. Now, isn't it true that Ms. French's salary was reduced because she was demoted because of job performance?

A. That's correct.
Q. So she wasn't similarly treated the way that Ms. Jett was treated, was she?
A. To my knowledge, she was. She was demoted. She was changed in her position.
Q. And when you say she, you are referring to Ms. Jett or Ms. French?
A. Ms. French.
Q. Ms. French was demoted because of job performance; is that correct?
A. Well, there was some medical problems. She went on medical leave.
Q. But you are not telling the jury that she was demoted because of a medical condition are you?
A. No. That affected her performance.

Q. Isn't it true, Ms. Helms, that that demotion occurred in
1989, five years before that school board policy was passed?
A. That's correct.
Q. So Ms. French was not affected by that school board
policy, was she?
A. No. The policy was not in effect at the time she was
demoted. Her pay was commensurate with her demotion.
Q. But yet you have listed her on this list to compare her
to Ms. Jett?
A. That is correct. Because Ms. Jett was demoted. Her

salary was not reduced commensurate with the demotion as
Ms. French was.
Q. But there is no indication in Ms. Jett's personnel file
or any other file that she had problems with job performance;
is that correct?
A. That's correct.
Q. Is it true, Ms. Helms, that Ms. French is the only
secretary listed on your chart?
A. No, that is not correct.
Q. Other than -- I'm sorry. Let me finish. Isn't it true

that Ms. French is the only secretary listed on this chart
other than Ms. Jett?
A. Ms. French? Did you -- I'm sorry.
Q. Ms. French?
A. Is the only secretary other than Ms. Jett. Ms. Showers is not technically a secretary, but is support staff in the district office.
Q. So will you answer my question? Then it's true that
Ms. French is the only other secretary listed on this chart
other than Ms. Jett?
A. That's correct.
Q. Now, I direct your attention back then to Ms. Showers
with -- her salary cut had nothing to do with that new policy
change in 1994, did it?
A. That's correct.

Q. Okay. In fact, her reduction of salary was effective
two years before that policy change came in effect, wasn't it?
A. That is right.
Q. Now, I would like to direct your attention to Mr. Calvin
Stevenson. His reduction in salary had nothing to do with
that policy change; did it either, Ms. Jett?
A. Yes. His did.
Q. Will you tell the jury -- well, let me ask it this way.

Mr. Stevenson was not involuntarily placed in his position as the principal of the middle school, was he?
A. Well, yes, he was, because he was previously the elementary principal. And he was transferred to the middle school as the principal.
Q. So he wasn't involuntarily placed -- well, he wasn't involuntarily taken out of a principal job and put into a lesser principal job, was he, or a lesser job? He maintained the same title as principal?
A. The same title.
Q. So he enjoyed the position of principal at the middle school to the tune of $49,724, didn't he?
A. Yes, ma'am.
Q. And even if -- it might have been sort of involuntary, he could hardly complain about that salary, could he?
A. I don't know whether he could complain or not.
Q. Would you complain at that salary, Ms. Helms?

A. It would depend on what I was making if I were transferred.
Q. But now, isn't it true, looking at his salary as middle

school principal, and his salary as elementary school principal, that the difference in his pay from one position to the other was not as great as the reduction in Ms. Jett's salary, and she was making three times less than he was making?

A. His reduction was not as great.

Q. Will you tell the jury his reduction?

A. Twenty-one hundred.

Q. Two thousand one hundred dollars?

A. Yes. Just about.

Q. Now, the last individual you have listed is Mr. Jerry Tyre?

A. Yes, ma'am.

Q. And your chart indicates that Mr. Tyre was director of transportation earning $47,486 a year; is that correct?

A. Yes, ma'am.

Q. Now, isn't it true that Mr. Tyre was also not involuntarily placed into a $47,000 a year job?

A. He was involuntarily moved from his role as a principal to the director of transportation.

Q. And he didn't suffer a salary cut in that move, did he? In fact, his salary went up, didn't it?

A. It probably stayed about the same. He was a high school principal.
Q. So in comparing -- even if you would try to compare Mr. Tyre to Ms. Jett, we don't have the same factors as far as being involuntarily thrust into a lesser position; is that correct?
A. That's not my understanding.
Q. What is your understanding, Ms. Helms?
A. Well, my understanding is he was moved from the high school principal's position which did pay more than the director of transportation to the director of transportation. That was not his choice. Then he was moved from the director of transportation to teacher. That was not his choice. And he realized a nine thousand dollar cut.
Q. But isn't it true, Ms. Helms, that Mr. Tyre was serving at the pleasure of whoever the superintendent and the board was at that particular time?
A. We all serve at the pleasure of the superintendent and board.
Q. Isn't it true that when you have those high level administrative positions, you expect some administrative

changes when the administration changes?
A. We all serve on an annual contract.
Q. Isn't it customary to expect some changes when administrations come in to the Washington County school board,

Ms. Helms?
A. It depends. It really depends on who the person coming in is.
Q. But wasn't the change that -- that was directed at Mr. Tyre that particular time the direct result of a change in administration?
A. The two -- the two changes were with different administrations. The first was with one switch, and then the change from transportation to the other was with another.
Q. And will you tell the jury, after Mr. Tyre was changed from director of transportation to a teacher position, can you tell the jury what his salary was?
A. 38,828.
Q. Now, Ms. Helms, I would like to direct your attention to page 12 of -- let's see -- Plaintiff's Exhibit 2. I'm sorry -- no. Yes. I'm sorry. Plaintiff's Exhibit 2. I would like to go back to that second sentence on

page 12.
And I think you have read that: Due to consistently adverse audit related -- audit findings related to property, the superintendent transferred the property function from the plaintiff to the director of administrative services. Is that correct?
A. Yes, ma'am.
Q. And will you tell the jury who the director of